

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAWN M. VINCENT,

Petitioner,

DECISION AND ORDER

07-CV-6007L

v.

WILLIAM LAPE, Superintendent, Marcy
Correctional Facility, and Commissioner
WILLIAM S. GOORD, New York State
Department of Correctional Services,

Respondents.

This Court referred the *pro se* petition for habeas corpus relief to United States Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636. Respondents moved to dismiss the petition on the grounds that it was untimely under 28 U.S.C. § 2244(d).

Magistrate Judge Bianchini reviewed the papers and issued a thorough Report and Recommendation (Dkt. #14) recommending that the petition be dismissed. Vincent filed an objection to that Report and Recommendation (Dkt. #17) and the matter is now before this Court on review.

I have reviewed Magistrate Judge Bianchini's Report and Recommendation, Vincent's objection and the pleadings filed in the case. I accept and adopt the Report and Recommendation

of Magistrate Judge Bianchini and see no reason to modify or vacate that Report and Recommendation.


Magistrate Judge Bianchini thoroughly discussed the facts, and the federal law requiring petitions for habeas corpus relief to be filed timely pursuant to the Anti-terrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d). I agree with Magistrate Judge Bianchini that Vincent's petition is untimely, having been filed over one year after the deadline for filing such a petition. I also agree with Magistrate Judge Bianchini that there is no basis for equitable tolling to allow a late filing. I concur with Magistrate Judge Bianchini's recommendation that the petition should be dismissed.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Victor E. Bianchini (Dkt. #14). The petition for habeas corpus relief, filed by Shawn Vincent, is dismissed.

I deny a certificate of appealability because I believe Vincent has failed to make a substantial showing of any constitutional violation.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 26, 2007.